

IMPORTANT. These notes are an interpretation of the regulations and are designed to introduce interested parties to the topic. They should not be taken as a definition of the law or proposed laws. Whilst every care has been taken in the compilation of these notes, the ADF can accept no liability for any event arising from their use.

INTRODUCTION.

The introduction during 2008 of regulations designed to protect consumers from unfair trading practices provoked several enquiries from ADF members as to their legal position as suppliers of parts, equipment and materials to their customers who are, predominantly, 'trade' transactions.

Enquiries to the UK Office of Fair Trading proved fruitless as the enquiry was deemed by them to exceed their responsibility under the Enterprise Act to police consumer trade practices only.

The information in this briefing note was compiled with the assistance of the Birmingham office of law firm Martineau, to whom we offer our sincere thanks for their co-operation.

The **Consumer Protection from Unfair Trading Regulations** came in to force on 26 May 2008 implementing the EU Unfair Commercial Practices Directive in the UK

The Directive:

- harmonises unfair trading laws in all EU Member States;
- introduces a general prohibition on traders not to treat consumers unfairly. This prohibition is intended to act as safety-net consumer protection legislation.

In particular, the Directive obliges businesses not to mislead consumers through acts or omissions; or subject them to aggressive commercial practices such as high pressure selling techniques. The Directive also provides additional protections for vulnerable consumers who are often the target of unscrupulous traders.

However it specifically relates to products sold to consumers, rather than trade or business to business transactions, which fall within the scope of the **Business Protection from Misleading Marketing Regulations 2008**. These do not contain the same amount of detail or blacklist as the CPRs, and will probably not be enforced with the same enthusiasm.

The main prohibition of the Business Protection from Misleading Marketing Regulations 2008 is expressed in much more generic terms; examples of which, extracted from the Regulations are shown below:

Prohibition of advertising which misleads traders

- (1) Advertising which is misleading is prohibited.
- (2) Advertising is misleading which-
 - (a) in any way, including its presentation, deceives or is likely to deceive the traders to whom it is addressed or whom it reaches; and by reason of its deceptive nature, is likely to affect their economic behaviour; or
 - (b) for those reasons, injures or is likely to injure a competitor.

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(3) In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning-

- (a) the characteristics of the product (as defined in paragraph (4));
- (b) the price or manner in which the price is calculated;
- (c) the conditions on which the product is supplied or provided; and
- (d) the nature, attributes and rights of the advertiser (as defined in paragraph (5)).

(4) In paragraph (3)(a) the "characteristics of the product" include-

- (a) availability of the product;
- (b) nature of the product;
- (c) execution of the product;
- (d) composition of the product;
- (e) method and date of manufacture of the product;
- (f) method and date of provision of the product;
- (g) fitness for purpose of the product;
- (h) uses of the product;
- (i) quantity of the product;
- (j) specification of the product;
- (k) geographical or commercial origin of the product;
- (l) results to be expected from use of the product; or
- (m) results and material features of tests or checks carried out on the product.

(5) In paragraph (3)(d) the "nature, attributes and rights" of the advertiser include the advertiser's-

- (a) identity;
- (b) assets;
- (c) qualifications;
- (d) ownership of industrial, commercial or intellectual property rights; or
- (e) awards and distinctions.

It can be seen therefore that traders should exercise great care in the manner in which they, describe, promote, advertise, or claim attributes for the products they sell. This applies to all forms of publicity, including the internet.

It should also be remembered that where a trader supplies goods to a consumer, those transactions fall within the scope of the Consumer Protection from Unfair Trading Regulations mentioned earlier. These impose even greater restraint upon the supplier's trading practices.

Useful Information Sources

Martineau Solicitors, No. 1 Colmore Square, Birmingham B4 6AA Tel. 0870 763 1234 Web. <http://www.martineau-uk.com> (*Please mention the ADF*)

A guide to the EU Unfair Commercial Practices Directive can be downloaded from:

http://www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf

The full text of the Consumer Protection from Unfair Trading Regulations can be found at:

http://www.opsi.gov.uk/si/si2008/uksi_20081277_en_1